

the public record, together with any initial report of compliance submitted pursuant to § 2.33, and at the same time, will make available an explanation of the provisions of the order and the relief to be obtained thereby, and any other information which it deems helpful in assisting interested persons to understand the terms of the order. The Commission will publish the explanation in the FEDERAL REGISTER. For a period of sixty (60) days after placement of the order on the public record and issuance of the statement, the Commission will receive and consider any comments concerning the order that may be filed by any interested person. Thereafter, the Commission may either withdraw its acceptance of the agreement and so notify the parties, in which event it will return the affected portions of the matter to adjudication for further proceedings or take such other action as it may consider appropriate, or issue and serve its decision.

(g) This rule will not preclude the settlement of the case by regular adjudicatory process through the filing of an admission answer or submission of the case to the Administrative Law Judge on a stipulation of facts and an agreed order.

[40 FR 15236, Apr. 4, 1975, as amended at 42 FR 39659, Aug. 5, 1977; 43 FR 51758, Nov. 7, 1978; 50 FR 53305, Dec. 31, 1985; 54 FR 18885, May 3, 1989; 61 FR 50431, Sept. 26, 1996; 61 FR 50647, Sept. 26, 1996]

§ 3.26 Motions following denial of preliminary injunctive relief.

(a) This section sets forth two procedures by which respondents may obtain consideration of whether continuation of an adjudicative proceeding is in the public interest after a court has denied preliminary injunctive relief in a separate proceeding brought, under section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b), in aid of the adjudication.

(b) A motion under this section shall be addressed to the Commission and filed with the Secretary of the Commission. Such a motion must be filed within fourteen (14) days after:

(1) A district court has denied preliminary injunctive relief, all opportunity has passed for the Commission

to seek reconsideration of the denial or to appeal it, and the Commission has neither sought reconsideration of the denial nor appealed it; or

(2) A court of appeals has denied preliminary injunctive relief.

(c) *Withdrawal from adjudication.* If a court has denied preliminary injunctive relief to the Commission in a section 13(b) proceeding brought in aid of an adjudicative proceeding, respondents may move that the adjudicative proceeding be withdrawn from adjudication in order to consider whether or not the public interest warrants further litigation. Such a motion shall be filed by all of the respondents in the adjudicative proceeding. The Secretary shall issue an order withdrawing the matter from adjudication two days after such a motion is filed, except that, if complaint counsel have objected that the conditions of paragraph (b) of this section have not been met, the Commission shall determine whether to withdraw the matter from adjudication.

(d) *Consideration on the record.* (1) In lieu of a motion to withdraw a matter from adjudication under paragraph (c) of this section, any respondent or respondents may file a motion under this paragraph to dismiss the administrative complaint on the basis that the public interest does not warrant further litigation after a court has denied preliminary injunctive relief to the Commission. Motions filed under this paragraph shall incorporate or be accompanied by a supporting brief or memorandum.

(2) *Stay.* A motion under this paragraph will stay all proceedings before the Administrative Law Judge until such time as the Commission directs otherwise.

(3) *Answer.* Within fourteen (14) days after service of a motion filed under this paragraph, complaint counsel may file an answer.

(4) *Form.* Motions (including any supporting briefs and memoranda) and answers under this paragraph shall not exceed 30 pages if printed, or 45 pages if typewritten, and shall comply with the requirements of § 3.52(e).

(5) *In camera materials.* If any filing includes materials that are subject to confidentiality protections pursuant to

an order entered in either the proceeding under section 13(b) or in the proceeding under this part, such materials shall be treated as *In camera* materials for purposes of this paragraph and the party shall file two versions of the document in accordance with the procedures set forth in § 3.45(e). The time within which complaint counsel may file an answer under this paragraph will begin to run upon service of the *in camera* version of the motion (including any supporting briefs and memoranda).

[60 FR 39641, Aug. 3, 1995]

Subpart D—Discovery; Compulsory Process

§ 3.31 General provisions.

(a) *Discovery methods.* Parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; written interrogatories; production of documents or things for inspection and other purposes; and requests for admission. Unless the Administrative Law Judge orders otherwise, the frequency or sequence of these methods is not limited. The parties shall, to the greatest extent practicable, conduct discovery simultaneously; the fact that a party is conducting discovery shall not operate to delay any other party's discovery.

(b) *Initial disclosures.* Complaint counsel and respondent's counsel shall, within five (5) days of receipt of a respondent's answer to the complaint and without awaiting a discovery request, provide to each other:

(1) The name, and, if known, the address and telephone number of each individual likely to have discoverable information relevant to the allegations of the Commission's complaint, to the proposed relief, or to the defenses of the respondent, as set forth in § 3.31(c)(1);

(2) A copy of, or a description by category and location of, all documents, data compilations, and tangible things in the possession, custody, or control of the Commission or respondent(s) that are relevant to the allegations of the Commission's complaint, to the proposed relief, or to the defenses of the respondent, as set forth in

§ 3.31(c)(1); unless such information or materials are privileged as defined in § 3.31(c)(2), pertain to hearing preparation as defined in § 3.31(c)(3), pertain to experts as defined in § 3.31(c)(4), or are obtainable from some other source that is more convenient, less burdensome, or less expensive. A party shall make its disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation.

(c) *Scope of discovery.* Unless otherwise limited by order of the Administrative Law Judge or the Commission in accordance with these rules, the scope of discovery is as follows:

(1) *In general; limitations.* Parties may obtain discovery to the extent that it may be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent. Such information may include the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having any knowledge of any discoverable matter. Information may not be withheld from discovery on grounds that the information will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited by the Administrative Law Judge if he determines that:

(i) The discover sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(iii) The burden and expense of the proposed discovery outweigh its likely benefit.

(2) *Privilege.* The Administrative Law Judge may enter a protective order denying or limiting discovery to preserve the privilege of a witness, person, or governmental agency as governed by the Constitution, any applicable act of